

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**IN RE:  
PACKET CONSTRUCTION LLC**

**DEBTOR**

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§  
§  
§  
§

**BANKRUPTCY CASE NO. 23-10860**

**MOTION FOR AUTHORITY TO (I) ENTER INTO POSTPETITION FACTORING  
AGREEMENT (II) MODIFYING THE AUTOMATIC STAY**

**THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO YOUR INTERESTS. IF NO TIMELY RESPONSE IS FILED WITHIN 21 DAYS FROM THE DATE OF SERVICE, THE RELIEF REQUESTED HEREIN MAY BE GRANTED WITHOUT A HEARING BEING HELD.**

**A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO BE HELD.**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, Packet Construction LLC (“Debtor”) and files this Motion for Authority to (I) Enter into Postpetition Factoring Agreement and (II) Modifying the Automatic Stay (the “Motion”) and in support hereof, respectfully states as follows:

**I. JURISDICTION AND VENUE**

1. The Court has jurisdiction of the case and this Motion under 28 U.S.C. § 1334. This Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper under 28 U.S.C. §§ 1408 & 1409.

2. The Debtor remains in possession of the Estate as debtors-in-possession under 11 U.S.C. §§ 1107 & 1108.

**II. FACTUAL BACKGROUND**

3. On October 12, 2023 Packet filed its voluntary petition for relief pursuant to Chapter 11 of the Bankruptcy Code.

4. Packet's operations in performing civil construction for eclectic utilities and site work for foundations continue to be strong allowing it to operate on a cash positive basis and comply with all its obligations as a subchapter-V debtor in possession. However, payment from its customers has slowed from historically being a net thirty (30) days to closer to sixty to ninety (60-90) days.

5. Recognizing that the timing of collections of receivables is becoming slower, Packet approached several factoring companies for solutions to the slower-paying clients, and selected a factoring company, Amerifactors, (hereinafter "Factor" or "Amerifactors").

6. Amerifactors and Packet agreed to the terms and conditions, subject to Court approval, in the proposed Factoring Agreement (the "Agreement"), a copy of which is attached as "Exhibit A."

7. The Agreement provides for advances by Amerifactors to the Debtor of no more than \$1,000,000.00 in total, payment of 70% of the factored invoice to Packet immediately upon approval and provides for a sliding scale of percentages to be retained by Amerifactors based on the length of time to collect. *See* Exhibit "A" paragraphs 5-6. The factoring percentages in the agreement begin at 3% for invoices collected within 60-days and graduate up slightly for each successive period the invoice is not collected.

8. The Agreement remains unexecuted by the parties, so as of now, Packet is not indebted to the Amerifactors.

9. Packet has offered to assign its accounts to Amerifactors under the Agreement and Amerifactors has agreed to consider factoring accounts from the Debtor pursuant thereto.

10. Packet, notwithstanding its efforts to do so, is unable to obtain unsecured credit allowable under 11 U.S.C. Section 503(b)(1) as an administrative expense, or other than pursuant

to 11 U.S.C. Section 364(c)(2) and (3), and the Debtor is unable to obtain credit on terms equal to or more favorable than those proposed by Amerifactors.

11. Amerifactors has agreed to consider providing working capital to the Debtor in accordance with the Agreement in good faith, within the meaning of 11 U.S.C. Section 364(e), and all interested parties are being notified of the Motion, as evidenced by the affidavit of service, or were present at this Court's hearing on the Motion.

12. Good cause exists for approval of the Agreement to the factoring by Amerifactors under the terms of the Agreement, the entry of this Order will minimize disruption of the Debtor as a "going concern," and is in the best interest of the Debtor, its creditors, and its estate. The terms upon which the Debtor is authorized to utilize cash advances are determined as fair under the circumstances.

13. The Debtor has provided written notice of the filing of the Motion to Amerifactors, the United States Trustee, all of the Debtor's secured creditors, and all parties who filed requests for notice as evidenced by the affidavit of service filed by the Debtor's counsel with this Court, which notice this Court finds to be appropriate and adequate under Federal Rules of Bankruptcy Procedure 2002 and 4001, and as required by Section 364 of the Bankruptcy Code.

14. The Agreement with Amerifactors provides a vital source of working capital for the Debtor, is in the best interests of the Debtor and its estate, and is necessary to avoid immediate and irreparable harm.

**WHEREFORE**, the Debtor, Packet Construction respectfully requests entry of an order (a) granting the relief requested in the Motion; (b) approving the extension of Factoring Agreement on a post-petition basis and authorizing the Debtor to operate thereunder, and (c) granting such other and further relief as is just and proper.

Respectfully submitted,

THE LANE LAW FIRM, PLLC

/s/Robert C. Lane

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COUNSEL FOR DEBTOR

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Motion for DIP Financing Post-Petition was served upon the US Trustee and to the parties listed on the service list below and the attached mailing matrix either via electronic notice by the court's ECF noticing system or by United States first class mail, postage prepaid, on January 8, 2024:

Debtor:

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U.S. Small Business Administration  
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/s/Robert C. Lane  
Robert C. Lane

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0542-1  
Case 23-10860-cgb  
Western District of Texas  
Austin  
Mon Jan 8 09:51:49 CST 2024

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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

CAT Financial  
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The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

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(d)Spartan Business Solutions, LLC  
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End of Label Matrix  
Mailable recipients 90  
Bypassed recipients 4  
Total 94